BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of the Petition of	)	
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AT&T CORP. and ALASCOM, INC.	)	CC Docket No. 00-46
	)	
For Elimination of Conditions Imposed by the FCC on the AT&T-Alascom Relationship	)))	

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To: The Commission

OPPOSITION TO
<u>PETITION FOR ELIMINATION OF CONDITIONS</u>

UNITED UTILITIES, INC.

William K. Keane
Gerie A. Miller
Arter & Hadden LLP
1801 K Street, N. W., Suite 400K
Washington, D. C. 20006-1301
(202) 775-7123

Its Counsel

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SUMMARY

AT&T seeks to be relieved of market structure conditions recommended by the Alaska Joint Board and endorsed by this Commission. It also seeks elimination of the long-established policy proscribing multiple message toll earth stations in remote Alaskan Bush villages.

The Petition's treatment of the Bush earth station policy is clearly deficient. First of all, the Petition offers virtually no support for the proposition that the policy should be eliminated, or even discussion of the policy at all for that matter. Rather, it is devoted almost entirely to a discussion of competitive conditions affecting AT&T's operations in Alaska, and the burdens imposed by the separate affiliate/separate tariff conditions. Second, AT&T would have the bush earth station policy eliminated even though it recognizes that earth station duplication is as uneconomic today as it was in 1984 when the policy was adopted, and when there is no successor policy in place. Third, any change in the policy should be considered, if at all, only in a proper notice and comment rulemaking so as to allow development of a proper record, as the Commission itself has indicated previously.

Furthermore, the conditions from which AT&T seeks relief were formulated in order to protect the five objectives deemed essential for any Alaska market structure including the maintenance of revenue requirement neutrality, the encouragement of increased efficiency, and the preservation of universal service. Despite the Joint Board's emphasis on the integrated nature of its recommendations -- the fact that modification of any one aspect of its recommendations "could adversely impact

achievement of our market structure objectives"[1] -- AT&T would have the Commission eliminate pieces of the market structure in isolation from the rest.

Indeed, while the Commission would not know it from the Petition, at the same time AT&T is seeking to be relieved of conditions here, in Anchorage it is arguing for elimination of the jurisdictional separation factor which has been vital to Bush service (the conversation minute mile or "CMM" factor), as well as elimination of its (AT&T's) responsibilities as carrier-of-last-resort for the Bush. It would be a disservice to Alaska were the Commission to accept AT&T's invitation to dismantle the market structure so painstakingly created without consideration by, and recommendations from, a joint board. Given AT&T's strategy, referral to a joint board is required under Section 410(c) of the Act.

For all these reasons, the Petition should be referred to a joint board for development of a proper record or, in the alternative, denied.

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[1] Memorandum Opinion and Order in CC Docket 83-1376, FCC 94-116, reported at 9 FCC Rcd 3023, 3028-29 (1994).

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OPPOSITION TO PETITION FOR ELIMINATION OF CONDITIONS

United Utilities, Inc. ("United"), by its counsel, hereby submits this Opposition to the Petition for Elimination of Conditions filed by AT&T Corp and its subsidiary, Alascom, Inc. (respectively, "AT&T" and "Alascom"; jointly, the "Petitioners" or "AT&T Alascom"). The Petitioners seek to be relieved of market structure conditions recommended by the Alaska Joint Board in CC Docket No. 83-1376 and adopted by the Commission in 1994.[1] In addition, they seek elimination of the Bush earth station ownership policy adopted in 1984.[2]

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1 The Joint Board's recommendations are found in the Final Recommended Decision in CC Docket No. 83-1376, FCC 93J-2, 9 FCC Rcd 2197 (1993). The Commission's decision adopting the Joint Board's recommendations is found in a Memorandum Opinion and Order in the same Docket, FCC 94-116, reported at 9 FCC Rcd 3023 (1994).

2 Final Decision in CC Docket No. 80-584, 96 FCC 2d 522 (1984).

As demonstrated below, the Petition is deficient. It is premised on a view of the facts and circumstances in Alaska which focuses almost entirely on AT&T and its competitive situation: Scant, if any, attention is paid to those who have the most at stake -- Alaskan ratepayers, especially those like United's customers who reside in the Bush. Accordingly, United urges the Commission to refer the Petition to a federal-state joint board like the one which formulated the policies AT&T would now change. Details follow.

I.

INTRODUCTION

United is a Native American-owned local exchange carrier certificated under the laws of Alaska to provide telephone service in 58 Villages in the Alaskan Bush (a total of 5,000 access lines). Through its parent company, United is owned by two corporations formed under the Alaska Native Claims Settlement Act of 1971; the owners of these companies are almost all residents of Bush communities United serves.

United not only owns and operates exchange facilities, but in many of its locations it owns the toll interconnect facilities. In 16 of its Villages, United owns and operates point-to-point microwave facilities utilized for MTS and WATS interconnection; in 44 other Villages United owns a half-interest in, and operates jointly with AT&T Alascom ("AT&T") satellite earth stations used to interconnect United's subscribers with the toll network. These earth stations are licensed jointly to United and AT&T pursuant to the Commission's decisions in the Bush earth station rulemaking (CC Docket No. 80-584). See note 2, supra. United is also licensee of numerous Rural Radio/Basic Exchange Telecommunications Radio facilities serving Bush communities.

United's service area is one of the largest of any independent local exchange carrier ("LEC") in the United States. Its territory covers 70,000 square miles -- an area larger than the State of Washington. Most of its communities are in the Calista Region of Western Alaska (including St. Lawrence Island not far from Siberia), the Doyon Region of Northern Alaska, and in the Yukon River territories.

Service to United's communities is among the most challenging on earth. Its territory is characterized by bitterly cold winters, extended darkness during winter months, and extended daylight during the summer. Its communities are isolated. Access to its Villages is by air alone during most of the year; for a couple of months during the summer, certain of United's communities can be supplied by boats and barges from the Bering Sea.

Bush Villages are among the smallest, and certainly the most remote, communities in the United States. In the case of the 58 Villages which United serves, the population ranges from a high of 1,000 in Mountain Village to a low of about 20 persons in Lime Village. The average population is on the order of 250 persons. That population is almost entirely Native American, principally Yupik and Athabaskan. <u>Over 90 percent</u> of the residents depend for their livelihoods on subsistence hunting and fishing with only seasonal employment. More than <u>30 percent</u> of the families United serves have incomes below the poverty line. Many live in small, crowded houses without indoor plumbing.

Telecommunications facilities play a role in rural Alaska unequaled in the rest of the United States. Lacking access by road, the only ready access which Villagers have to neighboring Villages, to Anchorage, to Fairbanks, or to the Lower-48 is by telecommunications. These facilities are used for tasks taken for granted elsewhere: Ordering supplies, medical care, schooling, entertainment, etc.

Thus, United and its subscribers have a vital stake in this proceeding. If not handled properly, AT&T's Petition would undermine the progress made to date in bringing improved telecommunications to the Bush, and threaten universal service as well.

II.

BACKGROUND

AT&T requests elimination of a number of the market structure conditions imposed in connection with its acquisition of Alascom.[3] These conditions, in turn, grew out of market structure principles established in CC Docket 83-1376. They include the separate subsidiary/affiliate transaction rules, separate tariff requirements and Alascom's Common Carrier Services ("CCS") tariff. In addition, the Petition seeks to eliminate the Commission policy prohibiting the installation of more than one message toll earth station in Bush Villages.

AT&T contends that "the passage of time and substantial changes have overtaken the factual underpinnings [for the Alaska market structure] decisions and have undermined the justification for them"; and that "circumstances are far different today from what prevailed the last time the Commission thoroughly examined the Alaska market ...." Petition at pages 3-4. It further argues that there is "no need to refer any of the relief sought here to a federal-state joint board," contending, inter alia, that its

[3] AT&T's acquisition of Alascom was approved in Order and Authorization, FCC 95-334, 11 FCC Rcd 732 (1995).

proposals do not affect jurisdictional separations and are merely "corporate in nature". Id. at page 8.

In support of the earth station portion of its proposals, AT&T contends that elimination of the policy would "allow unfettered facilities-based entry into the Alaska bush and would smooth the way for more competitive offerings by AT&T, making the long-term continuation of CCS entirely unnecessary." Id., Summary at i-ii.

While not addressed in AT&T's Petition, it should be noted that AT&T is concurrently prosecuting other proposals in Anchorage, proposals which are intimately related to the relief it seeks here. In particular, AT&T is urging the Regulatory Commission of Alaska ("RCA") to authorize a new subsidy fund for service to the Bush based solely on intrastate revenues. In addition, AT&T is urging the RCA to relieve it of its carrier-of-last-resort ("COLR") responsibilities for the Bush.

III.

DISCUSSION

A. The Relief AT&T Seeks Is Unfounded.

The relief AT&T seeks, particularly elimination of the Bush earth station policy, is clearly unfounded.

A review of the Petition demonstrates a single-minded preoccupation with the Petitioners' own competitive circumstances, burdens said to be imposed by the current policies, the growth of competition in the Alaska interexchange market, and the like. See, e.g., id. at pages 5-13 (dwelling on the decline in AT&T's market share). Conspicuously absent from the Petition is any discussion, much less suggestion, that conditions in the Alaska Bush have changed since the market structure order was adopted, or since adoption of the Bush earth station policy. That should not be surprising.

The plain and simple fact is conditions remain as challenging in the Bush today as they were 10, 20 or more years ago. As noted above, fully one-third of United's subscribers have incomes below the poverty line, and that nearly all have at most seasonal employment living on subsistence hunting and fishing.

Thus, no rational consideration of AT&T's Petition can proceed without a proper factual record concerning the costs of providing exchange and interexchange service in the Bush and, most especially, the effects on Alaskan ratepayers of permitting more than one MTS earth station per Village.

However, neither the RCA, nor the FCC, nor any party (other than GCI) has actual data as to the cost consequences of duplicative Bush earth stations -- even though the development of just such data was an avowed purpose of, and a basis for, GCI's earth station demonstration project. These include costs for the satellite, for depreciation, and for the cost of money, to name just a few categories.

What we do know is that "both local and interexchange Bush service cost more than ratepayers can reasonably be expected to pay." AT&T Alascom Reply Comments filed March 1, 2000 at page 8. We also know that GCI's duplicative earth stations have been unprofitable, and that additional subsidies will be required to sustain the duplication. Recall that at the outset of the demonstration project GCI maintained that

> "the overall objective is to demonstrate that the integrated system developed by GCI can provide high quality, reliable state-of-the-art telecommunications services to rural Alaska at competitive rates without requiring external subsidies.

GCI Response to Data Request, filed August 18, 1995 in APUC Docket U-95-38, at page 1 (emphasis added). See also Reply of General Communication, Inc. filed August 24, 1995 in File No. 122-SAT-WAIV-95, at page 10. However, GCI has recently conceded that

> "...the provision of interexchange service to rural villages should be supported by a universal service fund, with a payment of cents per minute for each minute that originates or terminates in a rural location."

GCI Comments in RCA Docket R-98-1 filed at page 14.[4]

As AT&T Alascom has succinctly said, "Competitors invest where they expect to earn a profit, and bush Alaska is not a profitable place to serve." AT&T Alascom's Comments in Response to the Notice of Inquiry on Interexchange Market Structure filed June 17, 1998 at page 26. In other words, the economic basis for the Bush earth station policy -- that service to the Bush mandates one and only one MTS earth station -- has not changed.[5]

Given the lack of public data as to the costs of duplicative MTS earth stations, United has attempted to derive an approximate figure. By its estimations the capital cost per Village is $725,658 and the annual operating cost per Village $223,026.

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[4] AT&T asserts that "the Bush 'monopoly' already has been broken" by virtue of GCI's earth stations. Id. at page 21. AT&T's assertion is mistaken. In the sense which matters here, i.e. the impact on ratepayers, the earth station policy continues in effect since GCI has not been able to off-load the costs of its duplication on Alaskan ratepayers in general, or United's Native American ratepayers in particular.

[5] See Final Decision in CC Docket No. 80-584, FCC 83-605, 96 FCC 2d 522 (1984) at para. 40 (duplicative earth stations to be avoided if basic telephone service is to be provided "economically"); Tentative Decision in CC Docket No. 80-584, FCC 82-516, 92 FCC 2d 736 (1982), at para. 59 (mutual exclusivity exists between conflicting bush MTS earth stations due to "economic reasons"); Memorandum Opinion and Order in CC Docket No. 80-584, FCC 86-69, 59 RR2d 1167, 1170 (1986). ("duplicative facilities create[ ] unnecessary costs to consumers for essential MTS").

The capital cost per access line is $5,336 and the annual cost $1,640. The monthly cost per access line is $136.66. On a statewide basis the costs to duplicate Bush satellite service exceeds $100 million in capital costs and $30 million in annual operating costs.[6] While these are approximations, it is undeniable that it is no more economic to install duplicative earth stations today than it was in 1984. Thus, unless this Commission wants to pile subsidy on top of subsidy, the situation compels a solution along the lines of that previously suggested by United; namely, allowing new entrants to acquire a pro rata share of ownership in the existing facilities. This is precisely what the Commission ordered in 1984 when it faced competing claims by United and Alascom to sole ownership. While neither party liked the solution, it has worked. There is no reason in principle why the same, competitively neutral solution would not work today. In all events, any successor policy must be properly respectful of the key goals articulated by the Alaska Joint Board in 1993, goals embraced this Commission. These include, for example, increased efficiencies, revenue requirement neutrality, and the preservation of universal service, to name three. See Final Recommended Decision, 9 FCC Rcd 2197 (1993).

Furthermore, the proposed elimination of the Bush earth station policy is integrally related to the adoption of successor policies (i.e. a new Alaska subsidy and AT&T dispensation from COLR) which are still mere ideas, and which may never find their way into the rule books.

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[6] AT&T has estimated that capital costs for its replacement satellite facilities are $144 million with operating expenses of $8 million per year. Id. at page 12. AT&T has also stated that it lost $449,000 in revenue in one year from one Bush village and $924,000 in one year from another village due to the combined effects of the installation of DAMA upgrades and GCI duplicative earth stations. See AT&T Alascom's Comments in Response to the Notice of Inquiry on Interexchange Market Structure filed June 17, 1998 in RCA Docket No. R-98-1 at page 10.

To be sure, the RCA has underway a proceeding dealing with changes in the interexchange market structure in Alaska (Docket No. R-98-1), and AT&T's subsidy/COLR proposals are at issue in that docket.

However, the RCA has not acted on the proposals. On the contrary, the RCA's staff has observed that "The Commission [RCA] has no audited, quantitative data to determine the amount of needed rural support or the extent to which statewide average rates are insufficient to ensure services in rural areas." Order No. 4 in Docket R-98-1, Appendix A, at page 3. Thus, the staff has:

> "[r]ecommend[ed] against implementing any subsidy for IXC services before further study. Alascom and GCI should specifically identify those locations where each requests subsidy. ... It is possible that the calculated level of IXC support will be higher than state consumers can or should pay."

Order No. 4 in R-98-1, Appendix A (Staff Report) at page 2.[7]

Moreover, the staff has recommended against AT&T's COLR proposal urging that "AT&T Alascom [be retained] as the COLR." Order No. 4 in R-98-1, Appendix A, at page 36. In this regard the staff has observed that "...service in rural areas is both expensive and difficult. AT&T Alascom has economic incentive to exit many rural locations and will cede service to GCI given the opportunity." Ibid.[8]

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7 AT&T suggests that its proposed state subsidy be sized to support only one earth station per Village. AT&T Alascom's Reply Comments in Docket No. R-98-1, filed March 1, 2000 at page 5. But this does not come to grips with the stranded investment in those Villages where AT&T elects to withdraw altogether -- and the added cost burden that rural Alaskans would then face.

8 The staff recommended against AT&T's COLR proposal for another reason as well, namely network inefficiencies due to the fact that the AT&T and GCI DAMA systems are not interoperable. The lack of interoperability in turn necessitates double satellite hops with twice the transmission delay and reduced signal quality. For this reason the RCA's staff recommended keeping COLR responsibilities "within a single carrier." Staff Report at page 36.

The point here is not to debate the merits of AT&T's proposed Bush subsidy fund or its COLR proposal. The point is that AT&T's Petition cannot be acted upon responsibly when it seeks a form of relief, particularly elimination of the Bush earth station policy, before the Commission has developed a proper record regarding the effects of the policy's elimination on Alaskan ratepayers and before it has in place alternatives designed to preserve universal service. See General Communication, Inc., DA 96-99, released January 30, 1996 (waiver allowing GCI's duplicate earth station demonstration project, on the one hand, and elimination of the Bush earth station policy, on the other hand, "involve very different levels of relief"; "any broad change in our Bush policy [to] be undertaken in a separate proceeding with ample opportunity for parties to comment"). Id. at paras. 8-9.

B. The Market Structure Changes AT&T Seeks Should Be Referred to a Federal-State Joint Board.

The formulation of telecommunications policy for the Alaska Bush has historically been a shared undertaking between this Commission and the Alaska Commission. The current market structure -- and the conditions which AT&T seeks to eliminate -- were the product of recommendations from an Alaska Joint Board presented to, and adopted by, this Commission as an integrated whole.

In particular, the Joint Board endorsed continuation of the Bush earth station policy; relied upon AT&T's representations that it would serve as carrier-of-last-resort; and re-affirmed the use of the circuit equipment allocator in lieu of a new Alaska subsidy fund -- each of which was endorsed by this Commission. See Memorandum Opinion and Order in CC Docket No. 83-1376, supra, 9 FCC Rcd at 3024, 3028-29. In reaching these results, the Joint Board stated that its

> "[r]ecommendation is comprised of carefully balanced elements that are intended to be implemented as a whole. Elimination or significant modification of any one aspect of our overall recommendation could adversely impact achievement of our market structure objectives."

Id. at para. 1 (emphasis added).

Despite this, AT&T would have the Commission act on pieces of the Alaska market structure in isolation from the policy as a whole -- indeed it would dismantle that market structure. Such a result flies in the face of the careful approach to Alaskan market structure issues followed by this Commission in the past.

Rational decision-making requires administrative agencies to consider industry structure issues on an integrated basis, especially when piecemeal decision-making may produce inconsistent results. See ITT World Communications, Inc. v. FCC, 725 F.2d 732, 754-55 (D.C. Cir. 1984). Thus, a reasoned decision requires an answer to the questions raised above and development of a sound successor policy before the earth station policy is eliminated and universal service jeopardized -- not after. See Memorandum Opinion and Order, supra, at 3028 ("The Joint Board has supplied a 'reasoned analysis' for its proposal and we adopt it as our own.")[9]

AT&T contends that its Petition need not be referred to a joint board. Id. at page 18. However, concurrently with its efforts before this Commission, AT&T is waging an assault in Alaska on the principal federal support mechanism for Bush interexchange service, the conversation minute mile (or "CMM") factor used to separate

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9 Ironically, in 1998 AT&T itself argued that "it would be wrong and unfair to change one part of the [current regulatory] package, the facilities restriction, without making appropriate changes in the other parts." AT&T Alascom's Comments in Response to the Notice of Inquiry on Interexchange Market Structure in Docket No. R-98-1 filed June 17, 1998 at 6. AT&T's Petition now seeks precisely the same sort of piecemeal decision-making.

circuit equipment, including satellite earth station costs, as between the federal and the state jurisdictions. Just a few weeks ago AT&T told the RCA:

> The requirement that AT&T Alascom must comply with the jurisdictional separation rules should also be eliminated. Separations are unnecessary for a non-dominant carrier who is no longer rate-base, rate-of-return regulated. Because they are not competitively neutral, these obligations all should be lifted immediately.

AT&T Alascom's Reply Comments filed March 1, 2000 in RCA Docket No. R-98-1 at page 24.

In other words, AT&T's strategy -- of which elimination of the Bush earth station policy is merely a part -- is to extricate itself from its Bush responsibilities by allowing others to install earth stations, by shedding COLR, and by eliminating the CMM factor in favor of a fund based on Alaska traffic only. The allocator has been critical to the delivery of improved telecommunications services to the Bush. See Memorandum Opinion and Order, supra, at 3029 (rejecting Alascom arguments that the market structure recommended by the Joint Board would imperil its ability to serve the Bush -- the shoe was on the other foot then -- since the Bush earth station policy and the CMM factor were to be preserved). AT&T's effort to eliminate the allocator impacts jurisdictional separations between the interstate and intrastate jurisdictions. Thus, referral to a joint board is not only warranted as a matter of policy, but is mandatory under Section 410(c) of the Communications Act.[10]

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[10] Historically, the FCC has taken the lead in providing the financial incentives/support to extend message toll service to Bush Alaska. Despite strong opposition from AT&T, the FCC provided implicit support from AT&T's interstate revenues to AT&T Alascom's predecessor, Alascom, in the form of the CMM. The CMM has provided implicit interstate financial support for Alascom's in-state services including financial support for the Bush. In this regard, AT&T's proposed new subsidy (estimated at $7.9 million annually) does not come close to meeting the $30 million annual funding which Alascom has estimated as being generated by the CMM factor. Compare AT&T Alascom's
(Footnote Continued)

IV.

CONCLUSION

For the foregoing reasons, the Commission should refer AT&T's Petition to an Alaska joint board for development of a proper factual record on the installation of duplicative MTS earth stations in the Bush, and for recommendations regarding a new market structure for Alaska. In the interim the Petition should be deferred or denied.

Respectfully submitted,

UNITED UTILITIES, INC.

By: William K. Keane

William K. Keane
Gerie A. Miller

Arter & Hadden LLP
1801 K Street, N. W., Suite 400K
Washington, D. C. 20006-1301
(202) 775-7123

April 17, 2000

Its Counsel

Comments on the Staff Report and Proposed Regulations filed February 4, 2000 in RCA Docket No. R-98-1 at page 4 with Memorandum, Opinion and Order in CC Docket No. 83-1376, 9 FCC Rcd at 3028. And even AT&T concedes that its proposed subsidy would fall short in funding significant improvements in Bush service. Op. cit. at page 5.

CERTIFICATE OF SERVICE

I, Joseph C. Fezie, hereby certify that a true copy of the foregoing "Opposition to Petition for Elimination of Conditions" has been mailed to the following by First Class United States mail, postage prepaid, this 17th day of April, 2000.

Mark C. Rosenblum, Esquire
Judy Ello, Esquire
AT&T Corp.
Room 1135L2
295 North Maple Avenue
Basking Ridge, New Jersey 07920

Charles R. Naftalin, Esquire
Koteen & Natfalin, L.L.P.
1150 Connecticut Avenue, N. W.
Washington, D. C. 20036

Joseph C. Fezie